



Agricultural Marketing Service

7 CFR Part 870

[Doc. No. AMS-FTPP-21-0055]

RIN 0581-AE26

Economic Adjustment Assistance for Textile Mills

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) revises the regulation providing guidance for domestic manufacturers that consume Upland Cotton and voluntarily participate in the Economic Adjustment Assistance for Textile Mills Program. The revisions add definitions and codify certain participant responsibilities currently outlined in the existing user Agreement. The changes made by this rule are intended to strengthen management controls that have been added into the Agreement to prevent fraud, waste, and abuse. This action provides the necessary legal support for program administration.

DATES: *Effective date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment date: We will consider comments that we receive by the close of business [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. AMS may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: Interested persons are invited to submit written comments concerning this final rule. All comments must be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in

response to this final rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Dan Schofer, Cotton Program Manager, Warehouse and Commodity Management Division, Fair Trade Practices Program, AMS, USDA; Telephone: (202) 690-2434, or Email: Dan.Schofer@usda.gov.

SUPPLEMENTARY INFORMATION: Section 1207(c) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-234; May 22, 2008) directed the Secretary of Agriculture (Secretary) to provide economic adjustment assistance to domestic users of upland cotton under the Economic Adjustment Assistance to Users of Upland Cotton program. Under the program, domestic users of upland cotton may qualify for financial assistance that can be used to acquire, construct, install, modernize, develop, convert, or expand land, plant, buildings, equipment, facilities, or machinery used in the manufacture of final cotton products. Payments for such assistance are issued by the Commodity Credit Corporation (CCC). Recipients must use these funds within a certain timeframe and must maintain and provide, to program administrators, records related to their use of upland cotton and allowable capital expenditures under the program.

Section 1203(b) of the Agriculture Improvement Act of 2018 (Pub. L. 115-334; December 20, 2018) renamed the program “Economic Adjustment Assistance for Textile Mills” (EAATM). In a memorandum dated July 1, 2019, the Secretary redelegated authority to administer EAATM from the Farm Service Agency to AMS. A final rule published in the **Federal Register** on October 15, 2020 (85 FR 65500), amended 7 CFR part 2 to reflect the redelegation. The amended 7 CFR 2.79(a)(23) authorizes the AMS Administrator to administer the EAATM program (7 U.S.C. 9037(c)). A final rule published in the **Federal Register** on October 1, 2021 (86 FR 54339), removed the

EAATM regulations from 7 CFR part 1427 and added them in a new 7 CFR part 870 – Economic Adjustment Assistance for Textile Mills, in §§ 870.1 to 870.9.

For participation in the EAATM program, domestic users must enter into an Upland Cotton Domestic User Agreement (Form CCC-1045-DOM) (Agreement) and submit upland cotton consumption documentation to AMS's Warehouse and Commodity Management Division (WCMD) to receive financial assistance.

AMS is now codifying the requirements specified in the Agreement as regulations. This final rule amends 7 CFR part 870 by reorganizing and revising existing sections and adding several new sections, supplying definitions of certain program terms, and clarifying current program practices to provide a better understanding of CCC requirements for program participants.

Under this final rule, references in 7 CFR part 870 to the Upland Cotton Domestic User Program are revised to reflect the current name of the program, Economic Adjustment Assistance for Textile Mills. The final rule adds a new § 870.2 – Definitions, to provide the meaning of several terms used in program administration that have been subject to differing interpretations in the past. For example, the term *domestic user* is defined as a person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of spinning such cotton into yarn, papermaking, or production of non-woven cotton products. This definition clarifies and enhances the use of other terms already defined in the current regulations. *Eligible domestic users* is defined as domestic users who have entered into an Agreement with CCC to participate in the program. *Eligible upland cotton* is defined to mean baled lint; loose samples used for classification purposes that have been re-baled; semi-processed motes that are suitable for spinning, paper making, or production of non-woven fabric; or re-ginned motes. Eligible upland cotton cannot be cotton for which previous EAATM payments have been made, unprocessed derivatives of the lint cleaning process, or textile mill wastes. Similarly, the

term *final cotton product* is defined to mean a domestically manufactured final product that contains upland cotton to clarify those manufacturing purposes for which program assistance funds are eligible. Each of these definitions is intended to clarify eligibility for program participation.

The term *capital expenditures* is defined to mean a business's expenses related to the purchase or improvement of depreciable fixed assets, such as physical property, facilities, and equipment used in the manufacture of final products containing upland cotton. The terms *equipment* and *facility* or *plant* is defined to identify those fixed assets for which capital expenditures are recognized under the program. *Equipment* is defined to mean any machine used directly in the production of final cotton products in order to improve product quality, handling, and/or production efficiency, and *facility* or *plant* would mean the structures that house such equipment. *Readily put into service* is defined to mean facilities, equipment, and/or plants put into service within 24 months of purchase. The definition of *operating expenses* includes examples of funds expended that are not eligible for EAATM benefits, such as rent, salaries, supplies, utilities, insurance, taxes, and maintenance. Each of these definitions are necessary to clarify which expenses program participants can include in claims for assistance under the program.

Terms including *linters*, *pills*, and *raw notes* are defined to clarify types of processing byproducts that are not considered eligible upland cotton for program purposes. Terms including *agreement effective date*, *date of consumption*, *fiscal year*, and *marketing year* would be defined to clarify various timeframes related to application and reporting deadlines for program participation.

Terms used in the existing Agreement that are related to reporting and recordkeeping requirements also are defined in the regulations. The *Upland Cotton Domestic User Agreement* (Form CCC-1045 DOM) means the agreement between CCC

and an EAATM program participant, which outlines general program provisions and responsibilities of the program participant. This agreement is required of all program participants. The *Monthly Consumption Report* refers to Form CCC-1045-UP-2 – Monthly Consumption/Application for Payment Report, or other form as prescribed by CCC, that contains documentation of the baled cotton inventory consumed, the eligible domestic user's calculation of program payments for the month, and a signed certification regarding the documents submitted. Participants are required to maintain a *supplemental ledger*, which is defined as a line-item ledger of proposed capital expenditures for audit purposes. *Statement of eligible claim certification* is the document that identifies which domestic user in the manufacturing chain is eligible to claim financial assistance under the EAATM program for the use of specific semi-processed motes or re-ginned mote bales.

Terms used in filling out records and reports are also defined in § 870.2. *Upland cotton* means the widely cultivated American cotton plant (*Gossypium hirsutum*) that has short-to-medium staple fibers. *Final cotton product* is defined to mean domestically manufactured products containing upland cotton. *Net weight* means the gross weight of baled upland cotton consumed, less the weight of the bagging and ties.

Finally, § 870.2 includes definitions for other terms necessary for administration of the program as explained earlier, such as *Agricultural Marketing Service*, *Commodity Credit Corporation*, *Director of AMS's Warehouse and Commodity Management Division*, and the *Economic Adjustment Assistance for Textile Mills* program.

Currently, §§ 870.3 to 870.9 contain the definitions of upland cotton and domestic users eligible for program participation and provide instructions for filing applications for participation and payments under the program. Under this final rule, those sections are reorganized and revised to incorporate program provisions that are currently only

provided in the Agreement, and other sections are added to ensure that all of the program's parameters are codified.

Under the final rule, § 870.3 – Upland Cotton Domestic User Agreement, specifies how domestic users of upland cotton can enter into Agreements with CCC to participate in the EAATM program. Applicants are required to agree to use EAATM Program funds only in compliance with the program and to identify all manufacturing facilities under their operational control and for inclusion in the Agreement.

Section 870.5 – Eligible upland cotton, describes upland cotton eligible for payment under EAATM and specifies that only eligible cotton consumed by the user in the United States on or after the effective date of the Agreement is eligible for payment claims. Further, EAATM Program funds cannot be used for expenses incurred by a domestic user prior to signature by both parties to the Agreement.

Section 870.7 – Monthly Consumption Report, requires program participants to submit cotton consumption reports and supporting documentation to AMS during each month of the Agreement term, including those months in which no eligible upland cotton was consumed. Required reports would constitute participants' claims for payments under the program and include their calculations for such payments. Under the final rule, delinquent Monthly Consumption Reports are ineligible for payment for the applicable month. Section 870.7 further provides that AMS will not process reports/claims that contain errors or omissions. Finally, § 870.7 requires that, in the event of a transfer of eligible upland cotton bales, both program participants involved report to AMS any transfers of eligible upland cotton bales between them and that such transactions must be accompanied by a statement of eligible claim certification. Submission of the Monthly Consumption Report allows for validation of active participants, enumeration of domestic consumption, and provides a baseline for verifying that duplicate claims are not submitted for program payments.

Section 870.9 – Payment, specifies that the current rate for payment under the EAATM program is 3 cents per pound of eligible cotton consumed, and that cotton is considered consumed on the date the eligible cotton user removes the bale’s bagging and ties immediately prior to manufacturing it into final cotton products—without further processing. Section 870.9 further provides that payments are based on the bale’s net weight and are made available upon the eligible cotton user’s submission of the required reports and documentation.

Section 870.11 – Capital expenditures, specifies that eligible domestic cotton users can only use payments under the EAATM program to acquire or modernize land, buildings, or equipment in the United States which are directly attributable to the purpose of manufacturing upland cotton into final cotton products in the United States. Other uses, such as for operating expenses or other purchases are not allowed. Under § 870.11, participants using EAATM program funds for disallowed purposes are required to repay the money to CCC with interest and are ineligible for program participation for one year after the year of violation. Section § 870.11 further specifies that program participants must submit requests for pre-approval of capital expenditures under the program that exceed an amount specified in the Agreement and for any expenditures greater than \$10 million on a single, allowable, fixed asset. The regulation outlines the elements required to be submitted in a pre-approval request. The threshold value is specified in the latest Upland Cotton Domestic User Agreement, rather than in the regulations to allow the Agency to consider and respond to economic pressures.

Under the final rule, participants are required to make capital expenditures equal to or greater than amounts received as EAATM program payments within 18 months of the end of the marketing year for which payments are made, unless participants apply for and are granted a Funding Utilization Extension, but in no case more than an additional 36 months.

Fixed assets acquired and/or modernized with EAATM Program funds must be in operation within 24 months after the date of delivery. If unforeseen difficulties prevent utilization within the 24-month period, written approval must be obtained from WCMD for an extension of time. The timeframes and increased communication about expenditures between the Agency and participants are expected to increase auditability and transparency. Finally, § 870.11 provides that program participants cannot transfer—directly or indirectly—EAATM Program funds to another entity. Participants are required to complete an asset transfer certification in the event of a sale or transfer of assets to another program participant. Except for extenuating circumstances approved by AMS, fixed assets, purchased using EAATM Program funds, cannot be sold until they have been in operation for at least 36 months and cannot be purchased with EAATM Program funds again by another eligible domestic user.

Section 870.13 – Records and inspection, requires program participants to maintain all records and reports relating to their EAATM Agreement for a period of three years following termination of the Agreement. Detailed record requirements are intended to provide better guidance to the participants and expedite audits. These requirements include identifying elements of the monthly consumption listing, supporting documentation of purchased and consumed cotton, supporting documentation of used but ineligible cotton, inventory records, capital expenditures, and the supplemental ledger. Section 870.13 requires program participants to provide copies of records supporting payment claims to AMS upon demand, and to make all records related to their Agreements accessible to AMS, USDA, and/or any other governmental unit needing access for audit or inspection purposes. The reporting and recordkeeping requirements are needed for oversight to safeguard program integrity.

Section 870.15 – Compliance, enforcement, and appeals, provides that AMS will notify appropriate investigating agencies—and that CCC may terminate an Agreement

and demand full repayment plus interest—if a program participant is suspected of violating the Agreement, making any fraudulent representation, or misrepresenting any fact affecting a determination under the Agreement. Under the final rule, the participant could be barred from further government program participation as necessary to protect government interests. Further, CCC retains the authority to terminate an Agreement at any time. Section 870.15 also provides a process for appealing program administration decisions.

Required Regulatory Analyses

Paperwork Reduction Act

The Economic Adjustment Assistance for Textile Mills Program is exempt from the requirements of the Paperwork Reduction Act (Agricultural Act of 2014 (Pub. L. 113-79, Title I, Subtitle F, Administration Generally, Section 1601(c)(2)). Accordingly, the information collection requirements of this final rule have not been reviewed by the Office of Management and Budget.

Executive Order 13175

This final rule was reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions have Tribal implications. AMS has determined that this final rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Orders 12866 and 13563

Executive Order 12866 – Regulatory Planning and Review, and Executive Order 13563 – Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866. Therefore, OMB has not reviewed this rule.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of the action on small entities, and, accordingly, has prepared this Regulatory Flexibility Analysis (RFA).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. AMS certifies that this rule will not have a significant economic impact or burden on small Textile Mill entities. In making this determination, AMS considered the current and possible participant base of the Economic Adjustment Assistance for Textile Mills (EAATM) Program and the nature of this action. The EAATM Program is authorized by the Farm Bill, first in 2008 (Food, Conservation, and Energy Act (Pub. L. 110-246)), reauthorized in 2014 (Agricultural Act of 2014 (Pub. L. 113-79)) and 2018 (Pub. L. 115-334), and funded through Commodity Credit Corporation (CCC), with administrative oversight delegated to AMS.

AMS used the Small Business Administration's (SBA) definition of small business in reference to Textile Mills, found at 13 CFR 121.201. The affected industry falls under the North American Industry Classification System (NAICS) as Subsector 313, with most current participants classified as code 313110 – Textile Mills, Fiber, Yarn, and Thread Mills. This classification includes firms that process raw cotton into cotton products. SBA determines firm size for this industry by number of employees, but

on a per firm basis, with small firms defined as having fewer than 1,500 employees.

Current participants of the EAATM Program are required to be registered with the System for Awards Management; however, none of the current participants appear to have the small business registration denoted on their entity profile. EAATM participants do not disclose the number of employees in the agreements or applications submitted to CCC but based on familiarity with the industry and information from SBA's Dynamic Small Business Search Database, AMS estimates that 25 out of the 34 current participants can be considered small entities.

This action codifies existing requirements in the EAATM Domestic User Agreement and does not impose any new requirements. In analyzing the current economic impact on small entities, AMS could only deduce positive impact. The EAATM program has fewer than 40 participants, and AMS does not anticipate any surge in participation due to the action. Small Textile Mill participants in the EAATM Program will not be unduly or disproportionately burdened. Textile Mills of all sizes may benefit proportionately from the program, as it provides a payment per pound of cotton consumed to encourage domestic consumption of cotton.

The definition of an eligible participant in reference to the EAATM Program is someone regularly engaged in opening bales of eligible upland cotton for the purposes of spinning cotton into yarn, paper making, or production of non-woven cotton products in the United States, who has entered into an agreement with the CCC to participate in the upland cotton user program. Participants may be public or private nonprofit entities. All entities that adhere to the eligible participant definition and submit a monthly application indicating consumed bales of upland cotton, regardless of size, can voluntarily participate and benefit from the EAATM Program. Program provisions are administered without regard for business size. The paperwork required to participate asks for information that is part of normal business records. The information collection burden for eligible

participants is minimal as they must only complete the user application form with the Textile Mill's monthly consumption. The voluntary nature of the program allows any eligible participant to stop participating if they find program participation causes an undue or disproportionate burden.

E-Government Act

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601 *et seq.*) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988

This final rule was reviewed under Executive Order 12988 – Civil Justice Reform. This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The final rule is not intended to have retroactive effect. Before any judicial actions may be brought regarding the provisions of this rule, administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Exemption from Notice and Comment

The EAATM program is authorized under Title I of the Agricultural Act of 2014. As such, regulations for EAATM may be made without regard to the notice and comment provisions of the Administrative Procedures Act at 5 U.S.C. 553. (See 7 U.S.C. 9091(C)(2)(a)) Nevertheless, AMS is interested in public feedback and invites comments on this final rule from interested persons that may inform future rulemaking. Comments are due [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Further, AMS finds there is good cause for making this rule effective immediately. Implementing the provisions of this final rule without a 30-day delay

provides program continuity and enumerates participation requirements necessary for the industry to ensure access to program benefits.

List of Subjects in 7 CFR Part 870

Cotton, EAATM, Payments, Reporting and recordkeeping, Textile mills, Upland Cotton Domestic User Agreement.

For the reasons set forth in the preamble, the Agricultural Marketing Service revises 7 CFR part 870 to read as follows:

PART 870 – ECONOMIC ADJUSTMENT ASSISTANCE FOR TEXTILE MILLS

Sec.

870.1 Applicability.

870.2 Definitions.

870.3 Upland Cotton Domestic User Agreement.

870.5 Eligible upland cotton.

870.7 Monthly Consumption Report.

870.9 Payment.

870.11 Capital expenditures.

870.13 Records and inspection.

870.15 Compliance, enforcement, and appeals.

Authority: 7 U.S.C. 9037(c).

§ 870.1 Applicability.

(a) These regulations specify the terms and conditions under which the Commodity Credit Corporation (CCC) will make payments to eligible domestic users who have entered into an Upland Cotton Domestic User Agreement with the Agricultural Marketing Service to participate in the Economic Adjustment Assistance for Textile Mills Program.

(b) The Agricultural Marketing Service will specify the forms to be used in administering the Economic Adjustment Assistance for Textile Mills program.

§ 870.2 Definitions.

For the purposes of the regulations in this part:

Agreement effective date means the date on which the Upland Cotton Domestic User Agreement takes effect or becomes operative and enforceable.

Agricultural Marketing Service (AMS) means the Agricultural Marketing Service of the United States Department of Agriculture, which administers the Economic Adjustment Assistance for Textile Mills Program.

Bale weight means the auditable weight of a bale of cotton as determined on a scale certified as accurate by an independent party.

Baled lint means ginned or processed cotton lint, including but not limited to lint classified by the Agricultural Marketing Service as Below Grade, compressed into a standard-sized and weighed pack.

Capital expenditures means funds expended by a business for modernization or acquisition of depreciable fixed assets such as property, fixtures, or machinery that are directly attributable to the improvement of productivity or efficiency of the domestic user in the manufacturing of final products containing upland cotton. Capital expenditures do not include debt service payments, even if such debt service payments are for debt used to finance capital expenditures.

Commodity Credit Corporation (CCC) means the wholly owned government corporation within the U.S. Department of Agriculture, whose funds, facilities, and authorities are used to implement specific activities as authorized by Congress.

Date of consumption means the date the bagging and ties are removed from the bale, as determined by AMS.

Director means the Director of the Warehouse and Commodity Management Division (WCMD) part of the Agricultural Marketing Service's Fair Trade Practices Program.

Domestic user means a person who is regularly engaged in the business of opening bales of eligible upland cotton in the United States for the purpose of spinning such cotton into yarn, papermaking, or production of non-woven cotton products also in the United States.

EAATM Program funds means funds provided by CCC as Economic Adjustment Assistance for Textile Mills under the terms of the Agreement.

Economic Adjustment Assistance for Textile Mills (EAATM) means the program authorized by Congress under which eligible domestic users of eligible upland cotton can apply for and receive financial assistance to offset capital expenditures related to investments in the United States for the manufacturing of products containing cotton, as provided in this part.

Eligible domestic user means a domestic user in the United States, who has entered into an agreement with CCC to participate in the Economic Adjustment Assistance for Textile Mills program.

Eligible upland cotton means baled upland cotton, regardless of origin, that is opened by an eligible domestic user and is baled lint, re-baled loose samples, suitable semi-processed motes, or re-ginned motes.

Equipment means any machine used directly in the production of final cotton products in order to improve product quality, handling, and/or production efficiency.

Facility or Plant means the structure(s) that houses the necessary equipment for consuming and manufacturing eligible upland cotton into the final cotton product.

Final cotton product means product manufactured domestically that contains upland cotton.

Linters means lint produced from the cottonseed crushing process.

Marketing year means the one-year period starting on August 1 and ending on the following July 31.

Monthly Consumption Report means Form CCC-1045-UP-2, the Monthly Consumption/Application for Payment Report, or other form as prescribed by AMS, submitted by the eligible domestic user for program payment purposes that contains documentation of inventory consumed, payment amounts, and a signed certification.

Net weight means the bale weight less the weight of the bagging and ties.

Operating expenses means funds expended by a business in its normal activities, including but not limited to rent, salaries, supplies, utilities, insurance, taxes, and maintenance.

Operational control means the domestic user has plenary control over the facility during the term of the Upland Cotton Domestic User Agreement.

Person means any individual, partnership, corporation, association, public or private organization or governmental entity, or combination thereof.

Pills means waste from the mote cleaning process.

Raw motes means lint cleaner waste resulting from the ginning process.

Readily put into service means facilities, equipment, and /or plants put into service within 24 months of delivery.

Re-baled loose samples means loose samples of upland cotton that have been removed from cotton bales for classification purposes and subsequently re-baled.

Re-ginned mote bales means baled cotton fiber that has been removed from small, broken, or immature cotton seeds by re-ginning.

Statement of eligible claim certification means an official document identifying the entity eligible to claim EAATM financial assistance for their use of suitable semi-processed motes or re-ginned mote bales.

Suitable semi-processed motes means small, broken, or immature cotton seeds with attached cotton fibers that are of a quality suitable, without further processing, for spinning, papermaking, or production of non-woven fabric.

Supplemental ledger means a line-item record detailing qualifying capital expenditures that the eligible domestic user proposes to claim for program purposes.

Upland cotton means a widely cultivated American cotton plant (*Gossypium hirsutum*) having short-to-medium staple fibers.

Upland Cotton Domestic User Agreement (Form CCC-1045DOM or Agreement)

means an agreement between CCC and an eligible domestic user regarding EAATM program participation.

§ 870.3 Upland Cotton Domestic User Agreement.

(a) To be eligible for payment under the Upland Cotton Economic Adjustment Assistance for Textile Mills program, domestic users must apply for program participation by submitting a signed original copy of the version of the Upland Cotton Domestic User Agreement, then in effect, for approval and execution by the Agricultural Marketing Service on behalf of CCC. Upon approval, AMS will return an executed copy to the domestic user.

(b) The domestic user must stipulate in writing that the intended use of all funds received under the EAATM program will be for the sole purpose of capital expenditures directly attributable to the purpose of manufacturing upland cotton into final cotton products in the United States.

(c) The domestic user must identify all plants and/or facilities to be included as a part of the Upland Cotton Domestic User Agreement. The domestic user must have operational control of these plants and/or facilities.

(d) Payments will be made available to eligible domestic users who have entered into the version of an Upland Cotton Domestic User Agreement with CCC, then in effect, and who have complied with the program requirements of this part.

(e) Upland Cotton Domestic User Agreement forms may be obtained from the Warehouse and Commodity Management Division website.

§ 870.5 Eligible upland cotton.

(a) Upland cotton eligible for payment under this part must be cotton that is consumed by the domestic user in the United States on or after the effective date of a

signed Upland Cotton Domestic User Agreement, but not later than such date as may be set by the Agricultural Marketing Service.

(b) The following are not eligible for payment under this part:

(1) Cotton for which a payment under the provisions of this part has already been claimed or made available;

(2) Raw (unprocessed) motes, pills, linters, or other derivatives of the lint cleaning process; or

(3) Textile mill wastes.

§ 870.7 Monthly Consumption Report.

(a) Eligible domestic users making applications for payment under this part must submit a Monthly Consumption Report to AMS. The Monthly Consumption Report must include the following:

(1) Documentation of eligible upland cotton inventory consumed by the eligible domestic user;

(2) The eligible domestic user's calculation of financial assistance claimed for payment under the program; and

(3) The eligible domestic user's signed certification as to the accuracy of the Monthly Consumption Report.

(b) The eligible domestic user must report to AMS the activity pursuant to paragraph (a)(1) of this section for each month beginning on the effective date of the Agreement.

(1) If the eligible domestic user's facility is temporarily closed for any reason, the eligible domestic user must notify AMS and submit a Monthly Consumption Report prior to the end of the month following the plant closure.

(2) Except as provided in paragraph (b)(1) of this section, the domestic user must submit Monthly Consumption Reports every month, even when no eligible upland cotton has been consumed.

(c) Monthly Consumption Reports not submitted by the last business day of the following month will be considered late by AMS and are ineligible for payment.

(d) AMS will not process for payment Monthly Consumption Reports or any other required documents from an eligible domestic user that contain errors or omissions.

(e) Any transaction between two eligible domestic users involving the transfer of eligible upland cotton bales must be reported to AMS by both eligible domestic users with a statement of eligible claim certification as defined in § 870.2.

§ 870.9 Payment.

(a) The payment rate for purposes of calculating payments as specified in this part is 3 cents per pound.

(b) The payment rate is the rate in effect on the date of consumption.

(1) Baled eligible upland cotton consumption must take place in a building or collection of buildings where the cotton bale will be used in the continuous process of manufacturing the cotton into final cotton products in the United States, and as determined by AMS. Unbaled eligible upland cotton will be considered consumed by the domestic user on the date processed.

(2) The quantity of eligible upland cotton with respect to which a payment is made available shall be determined based upon the net weight of each bale of eligible upland cotton.

(c) Payments specified in this part will be determined by multiplying the payment rate by one of the following:

(1) In the case of baled upland cotton, whether lint, loose samples, or re-ginned motes, but not semi-processed motes, the net weight of the cotton consumed;

(2) In the case of unbaled re-ginned motes consumed, without re-baling, for an end use in a continuous manufacturing process, the weight of the re-ginned motes after final cleaning; or

(3) In the case of suitable semi-processed motes, 25 percent of the net weight of the semi-processed motes.

(d) In all cases, the payment will be determined based on the amount of eligible upland cotton that an eligible domestic user consumed during the immediately preceding calendar month.

(e) Payments specified in this part will be made available upon application for payment and submission of supporting documentation, as required by the provisions of this part.

§ 870.11 Capital expenditures.

(a) All payments to eligible domestic users of upland cotton under this part shall be used only for capital expenditures that acquire, construct, install, modernize, develop, convert, or expand land, plant, buildings, equipment, or machinery in the United States. Capital expenditures must be directly attributable to the purpose of manufacturing upland cotton into final cotton products in the United States and certified as such by the domestic user. Expenditures that are not directly associated with manufacturing of upland cotton into final cotton products in the United States are outside the purpose and scope of the Economic Adjustment Assistance for Textile Mills Program and are not eligible expenditures for funds under this part.

(b) Operating expenses are not eligible for purposes of this part.

(c) If AMS determines, after a review or audit of the eligible domestic user's records, that economic adjustment assistance under this part was not used for the purposes specified in paragraph (a) of this section, the eligible domestic user shall be:

(1) Liable to repay the assistance to CCC, plus interest, as determined by CCC;
and

(2) Ineligible to receive assistance under EAATM for a period of one year following AMS's determination.

(d) Any specific capital expenditure exceeding an amount, as specified in the version of the Upland Cotton Domestic User Agreement, then in effect, must be submitted for pre-approval. The request for pre-approval must include:

(1) The description of the proposed expenditure specified for the applicable marketing year;

(2) Itemized purchase order and/or invoice number, if applicable;

(3) Documentation of scheduled purchase date(s), installation date, and location (which facility); and

(4) Any additional information required by AMS.

(e) The eligible domestic user must make capital expenditures equal to, or greater than, any amounts received as EAATM Program funds, within 18 months following the end of the applicable marketing year. Equipment, facilities, and plants purchased with EAATM Program funds must be readily put into service as defined in § 870.2. The eligible domestic user must:

(1) Make capital expenditures that exceed the amount paid to the eligible domestic user for any marketing year. EAATM Program funds will not carry over to the following marketing year without a written Funding Utilization Extension from AMS.

(2) Request a Funding Utilization Extension for approval from AMS to be considered for any capital expenditure exceeding a value of \$10 million on a single, allowable, fixed asset.

(3) Request a Funding Utilization Extension at the time of a pre-approval for a single item expenditure pursuant to paragraph (d) of this section.

(4) Applications for a Funding Utilization Extension Request must include, but are not limited to:

- (i) Detailed plans for the expense;
- (ii) Timeline of construction;
- (iii) Schedule of payments;
- (iv) Estimated date of when the capital expenditure will be operational;
- (v) Explanation of how the expense meets the criteria for allowable purposes;
- (vi) Justification for the extension request; and
- (vii) Any other information or supporting documentation required by AMS.

(5) WCMD will consider Funding Utilization Extension requests based on allowable purposes. In any event, the maximum time extension for EAATM Program funds to be used for capital expenditures will be 36 months beyond the existing timeframe of 30 months (Marketing Year + 18 months), for a total of 66 months.

(6) EAATM Program funds will be reconciled against the eligible expense(s) specified in the Funding Utilization Extension until the approved time extension has expired or funds are exhausted.

(f) Fixed assets acquired and/or modernized with EAATM Program funds must be in operation within 24 months after the date of purchase. If unforeseen difficulties prevent utilization within the 24-month period, written approval must be obtained from WCMD for an extension of time.

(g) Direct or indirect transfer of EAATM Program funds to another entity is prohibited. In the event of a sale/transfer of an eligible domestic user's business or its assets, the eligible domestic user must sign a written verification certifying that no EAATM Program funds were transferred, either in cash or as an asset purchased exclusively to be transferred to the acquiring company.

(h) Each eligible domestic user involved in an acquisition/merger/transfer must notify AMS and provide AMS with an itemized ledger detailing specific equipment, building, facility, property, and/or plants bought with EAATM Program funds included with any acquisition/merger/transfer. In the event of an acquisition/merger/transfer and without extenuating circumstances, equipment, facilities, and/or plants purchased with EAATM Program funds by an eligible domestic user must be operational for a minimum of 36 months prior to its sale and cannot be purchased with EAATM Program funds again by another eligible domestic user.

§ 870.13 Records and inspection.

(a) *Required records.* The eligible domestic user shall maintain all records and reports relating to their Upland Cotton Domestic User Agreement for a period of three years following termination of the Agreement. At a minimum, records must include those listed in paragraphs (a)(1) through (6) of this section.

(1) A monthly consumption record including a detailed list of bales consumed, showing the bale numbers, net weights, date received, date consumed, type of eligible upland cotton, and a facility identifier. The consumption record must be accompanied by source documents such as purchase orders and invoices to verify the information provided.

(2) Documentation supporting the receiving of cotton, including a register of contracts, amendments, and cancellations. Records must show the number of bales received each month by type of cotton, supported by invoices or waybills and weight sheets documenting the net weight when received at the user's facility.

(3) Documentation tracing the consumed bale weight back to source documents showing the documented bale weight received at the user's facility.

(4) Documentation supporting the acquisition, consumption, and disposition of ineligible cotton and other textiles.

(5) A bale inventory record that summarizes, at least monthly, the eligible domestic user's beginning inventory, receipts, adjustments, consumption, and ending inventory.

(6) Documentation of capital expenditures that are equal to or greater than payments received.

(i) The eligible domestic user must record information about capital expenditures in a supplemental ledger as defined in § 870.2, including, but not limited to, detailed descriptions of each capital expenditure, acquisition date, date of payment, amount of payment, and proof of payment, serial number(s), invoice number, and location (applicable facility).

(ii) Capital expenditures must be grouped by Marketing Year.

(iii) Each line item must reflect only a single expense for an identifiable single expenditure.

(b) *Inspection of records.* (1) Upon request from WCMD, the eligible domestic user must forward to WCMD copies of any and all records which support the domestic user's claims for payment.

(2) Eligible domestic users must make records available at all reasonable times for an audit or inspection by authorized representatives of AMS, the United States Department of Agriculture, and/or any other governmental unit needing access for audit or inspection purposes.

(3) Eligible domestic users shall permit, and assist without impediment, any AMS-authorized individual to inspect or audit, on any business day during the normal and customary hours of business, the books, papers, records, accounts, and other applicable documents relating to the Agreement. Failure to provide access or respond timely to requests for information and records will result in denial of benefits.

§ 870.15 Compliance, enforcement, and appeals.

(a) AMS will notify the appropriate investigating agencies of the United States and CCC may terminate the Agreement and demand a full refund of payments plus interest and suspend and debar the offending company from further government participation as deemed necessary to protect the interests of the government, if the eligible domestic user is suspected by AMS to have knowingly:

- (1) Adopted any scheme or device which violates the Agreement;
- (2) Made any fraudulent representation; or
- (3) Misrepresented any fact affecting a determination under the Agreement.

(b) No Member or Delegate of Congress shall be admitted to any share or part of the Agreement or to any benefit to arise therefrom, except that this provision shall not be construed to extend to their interest in any incorporated company, if the Agreement is for the general benefit of such company, nor shall it be construed to extend to any benefit which may accrue to such official in their capacity as a party to an Agreement.

(c) Eligible domestic users who dispute a WCMD program administration decision may request a review of the decision by the Director.

(1) Requests for review must be in writing and contain the relevant facts upon which the review will be heard. Requests must be received by WCMD within 15 days from the date the eligible domestic user receives the disputed decision.

(2) Requests must be directed to: Director, Warehouse and Commodity Management Division, Agricultural Marketing Service, U.S. Department of Agriculture, at EAATM.ELS@usda.gov.

(d) 7 CFR 2.79(a)(23) authorizes the AMS Administrator to administer the EAATM program (7 U.S.C. 9037(c)). In light of the aforementioned redelegation, AMS is considered a successor “Agency” under 7 CFR 11.1, and decisions made under EAATM, if deemed adverse, are subject to NAD jurisdiction. Accordingly, appeals under this program shall be heard by the USDA National Appeals Division.

(e) Eligible domestic users who dispute a review decision by the Director must appeal such decision to the USDA National Appeals Division pursuant to 7 U.S.C. 6912(e) and 7 CFR 11. Such an appeal must be made within 30 days of receipt of a WCMD decision.

(f) CCC may terminate the Upland Cotton Domestic User Agreement at any time.

(g) When a new Agreement is executed for any reason, including but not limited to programmatic requirements, expiration of authorizing legislation, or exhaustion of funds, any previous Agreement between CCC and the eligible domestic user shall be null and void/terminated.

(h) The Director may waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

Erin Morris

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Agricultural Marketing Service.

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